

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
 Criminal Bail Application No.S-175 of 2018
 Criminal Misc. Application No. S-160 of 2018
 Criminal Misc. Application No. S-161 of 2018

DATE OF HEARING

ORDER WITH SIGNATURE OF HONOURABLE JUDGE

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Mr. Mazhar Ali Mangan, advocate for applicant/accused Zahid Hussain Khuhawar in Crl. Bail Application No.S-175/2018 and for respondents/accused Toufique alias Bahoo Khuhawar and Allan alias Ali Bux Khuhawar in Criminal Misc. Applications No.S-160 & 161 of 2018.

Mr. Naushad Ali Tagar, advocate for complainant Mohammad Mithal in Crl. Bail Application No.S.175/2018, who is applicant in Crl. Misc. Applications No.S-160 & 161 of 2018.

Mr. Sharafuddin Kanhar, APG for the State.

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Date of Hearing & Order: 07-09-2018

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ORDER

ZAFAR AHMED RAJPUT, J.- By this common order I intend to dispose of all three abovementioned applications as the same being arisen out of Crime No.19/2018, registered at Police Station Taluka, Larkana, for offence under Sections 324, 109, 506/2, 337-H(ii), PPC, have been heard together.

2. Through Criminal Bail Application No.S-175/2018 applicant/accused Zahid Hussain son of Mohammad Pannah Khuhawar has sought pre-arrest bail in the aforementioned crime/FIR. His earlier application for grant of pre-arrest bail being Crl. Bail Appln. No.S400/2018 was heard and dismissed by the learned VI-Additional Sessions Judge, Larkana vide order dated 29.3.2018. He was admitted to ad-interim pre-arrest bail by this Court vide order dated 20.4.2018, now he seeks confirmation of the same. While through both captioned criminal miscellaneous applications, filed under subsection (5) of Section 497, Cr.P.C, applicant/ complainant Haji Mohammad Mithal Kalhoro son of Fateh Ali seeks cancellation of post arrest bail granted to respondents/accused Toufique alias Baboo and Allan alias Ali Bux, both by

caste Khuhawar in CrI. Bail Applications No.620/2018 and 682/2018 vide orders dated 07.5.2018 and 16.5.2018 respectively.

3. Facts in brief leading to these applications are that on 12.3.2018 complainant/applicant Haji Mohammad Mithal lodged the above FIR, alleging therein that he engaged his son Saddam Hussain with the sister of Mohammad Sadiq son of Rustam Ali Khuhawar, on which accused Zahid was annoyed with him. It is further alleged that on 12.3.2018, at about 5.30 p.m. complainant was sitting at Tailor Shop along with his son Abdul Lateef and son-in-law Ahmed Ali, when accused Shahid, Toufique alias Baboo and Allan came there with pistols and stating that on the directions of accused Zahid they had come there to kill the complainant and his family and then accused Toufique alias Baboo and Allan fired from their pistols upon the complainant, which hit to his son Abdul Lateef on different parts of his body viz. Right leg, right thigh and consequently he fell down. Thereafter, accused persons went away.

4. Mr. Mazhar Ali Mangan, learned Counsel appearing for applicant/ accused Zahid Hussain has mainly contended that the applicant is innocent and has falsely been implicated in this case; that even his presence has not been shown at the place of occurrence in the F.I.R and only he has been assigned a role of abettor, hence it is a fit case of further inquiry entitling the applicant for the grant of bail.

5. On the other hand, Mr. Naushad Ali Tagar, learned Counsel for complainant Mohammad Mithal has contended that co-accused Toufique and Allan with intention to commit his Qatl-i-amd caused firearm injuries to son of the complainant, namely, Abdul Lateef on the directions of applicant/accused Zahid Hussain, therefore, he is equally liable for the criminal liability for the offences under section 324, PPC which offence falls within the prohibitory clause of Section 497, Cr.P.C. While arguing the criminal

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miscellaneous applications, the learned Counsel for the complainant/applicant has stated that both the respondents/accused, namely, Toufique and Allan alias Ali Bux are nominated in the FIR with specific role and the version of complainant is fully supported with the MLR; however, the learned trial Court has admitted them to post arrest bail without considering the evidence available with the prosecution.

6. Mr. Mazhar Ali Mangan, learned Counsel for respondents/accused Toufique and Allan alias Ali Bux while arguing Crl. Misc. Application has maintained that both the respondents/accused have been admitted to bail by the learned trial court while observing that no specific role is assigned to the said respondents and the alleged offence under Section 506/2 & 337-H(ii), PPC does not fall within the prohibitory clause of Section 497, Cr.P.C and since the injuries allegedly received by the son of the complainant are on non-vital part of his body, the applicability of Section 324, PPC shall be determined after trial. He added that there is no allegation on the respondents/accused in criminal miscellaneous applications that after grant of post arrest bail they have ever misused such concession, hence no ground for cancellation of their bail is made out.

7. Learned APG, on the other hand, does not oppose confirmation of ad-interim pre-arrest bail already granted to applicant/accused Zahid Hussain on the grounds that admittedly the said applicant was not present at the place of occurrence at the relevant time and co-accused have already been admitted on post arrest bail. He has also while supporting the orders of the trial Court opposes criminal miscellaneous applications for cancellation of bail on the grounds that the police has already submitted challan before the trial Court and the alleged offence except under Section 324, PPC, does not fall within the prohibitory clause of Section 497, Cr.P.C and so far the application of Section 324, PPC is concerned, it is yet to be determined after the trial.

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8. Heard the learned Counsel for the parties and perused the material available on record.

9. It is an admitted position that the applicant/accused Zahid Hussain in Criminal Bail Application No.S-175 of 2018 is not shown to be present at the place of occurrence at the time of incident and he has been assigned the role of abettor in the FIR, however, prima facie, the evidenced with regard to allegation of abetment ^{- is -} lacking; as such, his involvement as an abettor in commission of the offence is yet to be established. Hence allegation against him requires further inquiry in terms of subsection (2) of Section 497, Cr.P.C; further, the police has already submitted the challan and there is no allegation against him of misusing of ad-interim bail.

10. So far the cancellation of respondents' bail in criminal miscellaneous applications is concerned, it may be observed that principles governing the grant of bail and the cancellation of bail substantially stand on different footings and there is no compulsion for cancelling the bail unless the bail granted order is patently illegal, erroneous, factually incorrect and has resulted in miscarriage of justice or where accused is found to be misusing the concession of bail by extending threats or tempering with the prosecution case. Courts have always been slow to cancel bail already granted, as the liberty of a person cannot be curtailed on flimsy grounds. The grounds for cancellation of bail are parimateria with the principles which apply to setting aside the order of acquittal. Once bail is granted by a Court of competent jurisdiction, then strong and exceptional grounds would be required for cancellation thereof.

11. In the instant case, it appears that the respondents/accused Toufique and Allan alias Ali Bux were granted post arrest bail by the learned trial Court vide orders dated 07.5.2018 and 16.5.2018 respectively. The complainant has not asserted in his applications for cancellation of bail if the

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respondents have misused the concession of bail. The only ground raised in these applications is that the version of complainant is fully supported with the medico legal opinion. In this regard, it may be observed that the alleged injuries are not on the vital part of the body of the injured son of complainant. Had there been any intention of killing the son of complainant on the part of respondents/ accused, they would have fired on the injured targeting his vital parts. Hence the learned trial Court has rightly held while passing the impugned orders that application of Section 324, PPC shall be determined after trial.

12. For the foregoing facts and reasons, the ad-interim pre-arrest bail granted to applicant/accused Zahid Hussain vide order dated 20.4.2018 by this Court is hereby confirmed on the same terms and conditions and since no occasion has been found by this Court for interfering with the lawful exercise of the jurisdiction in the matter of bail granted by the learned trial Court to respondents/accused Toulique and Allan alias Ali Bux, the criminal miscellaneous applications for cancellation of bail are dismissed being devoid of merit.

Qazi Tahir PA/8